

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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<b>GREEN MOUNTAIN GLASS, LLC</b>	§
<b>AND CULCHROME, LLC</b>	§
Plaintiffs,	
v.	§
<b>SAINT-GOBAIN CONTAINERS, INC.</b>	§
<b>dba VERALLIA NORTH AMERICA</b>	§
Defendant.	
	§
	§

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**Case No. 1:14-cv-00392-GMS**

**DECLARATION OF W. TODD SCHOETTELKOTTE IN SUPPORT  
OF OPPOSITION TO MOTION FOR PREJUDGMENT INTEREST, ENHANCED  
DAMAGES, ATTORNEYS' FEES, AND CONDITIONAL MOTION FOR A NEW  
TRIAL REGARDING ARDAGH'S INFRINGEMENT OF U.S. PATENT NO. 6,230,521**

I, W. Todd Schoettelkotte, declare as follows:

1. I am President and a Managing Director of IPFC Corp. ("IPFC"), an independent consulting firm that provides a variety of consulting services, including financial analysis and valuation assessments for companies relating to technology issues, such as patents, trademarks, trade secrets, copyrights, and other forms of intellectual property. For more than 20 years, I have provided financial consulting services in a variety of litigation matters and disputes, including intellectual property, breach of contract, business interruption, valuation, and general damage assessments. I was retained as an expert on behalf of Ardagh to offer my opinions relating to damages in this case and to respond to Green Mountain Glass's ("GMG") claims for and calculations of damages.
2. Based upon personal knowledge, if called upon, I could and would competently testify to the following.
3. I have reviewed the Declaration of Michael J. Lasinski in Support of Plaintiffs' Motion for Prejudgment Interest, Enhanced Damages, Attorneys' Fees, and Conditional Motion for a New Trial ("Lasinski Declaration").
4. Paragraph 4 of the Lasinski Declaration states that "[t]he Prime Rate serves as a conservative measure because plaintiffs['] borrowing cost would have been higher than the

Prime Rate during this period. That is especially true given that plaintiffs did not generate revenues during this period.”<sup>1</sup> This statement is unsupported, and misstates the facts.

5. First, the fact that “plaintiffs did not generate revenues during this period”<sup>2</sup> is misleading. Plaintiffs’ sole business is the licensing of the ‘737 and ‘521 Patents. I understand that the Plaintiffs have shown no business expenses related to this activity, nor any ongoing need for the revenues.

6. Second, Mr. Lasinski offers no evidence that “plaintiffs borrowing cost would have been higher than the Prime Rate during this period.”<sup>3</sup> The Plaintiffs’ borrowing costs would be dependent on the Plaintiffs’ need for capital, what the capital might have been used for, Plaintiffs’ other assets (or the assets of their principals), among other considerations. These, and other, factors would have been taken into consideration as to whether or not the Plaintiffs would have been able to borrow at or below prime rates.

7. Third, Mr. Lasinski offers no evidence that the Plaintiffs did any borrowing, or experienced any borrowing costs.

8. In effect, Mr. Lasinski has simply assumed that the prime rate is appropriate.

9. The near-zero risk interest rate in the economy is generally taken to be the one year Treasury bill rate. Treasury bills, also called “T-bills,” are government securities with maturities ranging from a few days to 52 weeks.<sup>4</sup> Bills are sold at a discount from their face value.<sup>5</sup> The price of a bill is determined at auction.<sup>6</sup> Treasury bills are considered near-zero risk because they “are backed by the ‘full faith and credit’ of the U.S. government.”<sup>7,8</sup> I have been asked to calculate prejudgment interest using the one year Treasury bill rate.<sup>9</sup>

10. For sake of convenience, I have calculated prejudgment interest using Mr. Lasinski’s figures for Ardagh’s purchased non-flint cullet during the period March 28, 2008 through March 3, 2015 (approximately 4,192,815 tons of non-flint cullet during this period).

11. As detailed in Schedules 1.0 and 1.1 (attached hereto), my calculations in this regard yield total prejudgment interest through June 30, 2017 of \$972,381 based on quarterly compounding and \$919,986 based on annual compounding.

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<sup>1</sup> Declaration of Michael J. Lasinski in Support of Plaintiffs’ Motion for Prejudgment Interest, Enhanced Damages, Attorneys’ Fees, and Conditional Motion for a New Trial Regarding Ardagh’s Infringement of U.S. Patent No. 6,230,521, May 19, 2017, p. 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> [https://www.treasurydirect.gov/indiv/research/indepth/tbills/res\\_tbill.htm](https://www.treasurydirect.gov/indiv/research/indepth/tbills/res_tbill.htm)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> <http://www.finra.org/investors/us-treasury-securities>

<sup>8</sup> I have been informed that the Treasury bill rate is the statutorily prescribed measure for post-judgment interest under 28 U.S.C. § 1961.

<sup>9</sup> Sourced from the Federal Reserve Economic Data (<https://fred.stlouisfed.org/>).

12. In Paragraph 5 of the Lasinski Declaration, Mr. Lasinski estimated a daily interest amount for period July 1, 2017 through September 30, 2017 (i.e., Q3 2017) using the prime rate. I have also been asked to prepare a calculation of daily interest for this period using the Treasury bill rate, assuming that the U.S. Treasury bill holds constant at an average of 1.05%. As detailed in Schedules 1.0 and 1.1, my calculations in this regard yield daily interest of \$1,470 per day (based on quarterly compounding) and \$1,464 (based on annual compounding). If necessary, this daily amount can be multiplied by the appropriate number of days subsequent to June 30, 2017 and added to either the \$972,381 (compounded quarterly) or \$919,986 (compounded annually) discussed above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of June, 2017, at Houston, Texas.

A handwritten signature in blue ink, appearing to read "W. Todd Schoettelkotte".

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W. Todd Schoettelkotte

## Prejudgment Interest - Compounded Quarterly

March 28, 2008 - June 30, 2017

Period	Prior Quarter Royalty Base	Royalty Rate	Prior Quarter Royalties	Starting Accrued Royalties & Interest	T-Bill Rate (Annual)	Total Accrued Royalties & Interest	Interest Earned	Ending Accrued Royalties & Interest
Q2 2008	4,598	\$12	\$ 55,176	\$ -	2.35%	\$ 55,176	\$ 321	\$ 55,497
Q3 2008	127,135	\$12	1,525,620	55,497	2.06%	1,581,117	8,068	1,589,185
Q4 2008	141,555	\$12	1,698,660	1,589,185	0.96%	3,287,845	7,890	3,295,735
Q1 2009	127,640	\$12	1,531,680	3,295,735	0.55%	4,827,415	6,584	4,833,999
Q2 2009	125,493	\$12	1,505,916	4,833,999	0.50%	6,339,915	7,857	6,347,772
Q3 2009	151,974	\$12	1,823,688	6,347,772	0.43%	8,171,460	8,702	8,180,162
Q4 2009	156,394	\$12	1,876,728	8,180,162	0.33%	10,056,890	8,287	10,065,177
Q1 2010	138,898	\$12	1,666,776	10,065,177	0.34%	11,731,953	9,959	11,741,913
Q2 2010	152,902	\$12	1,834,824	11,741,913	0.36%	13,576,737	12,090	13,588,826
Q3 2010	158,530	\$12	1,902,360	13,588,826	0.26%	15,491,186	10,059	15,501,246
Q4 2010	157,968	\$12	1,895,616	15,501,246	0.25%	17,396,862	10,718	17,407,580
Q1 2011	151,794	\$12	1,821,528	17,407,580	0.26%	19,229,108	12,327	19,241,435
Q2 2011	159,378	\$12	1,912,536	19,241,435	0.19%	21,153,971	10,041	21,164,012
Q3 2011	157,015	\$12	1,884,180	21,164,012	0.13%	23,048,192	7,487	23,055,679
Q4 2011	167,390	\$12	2,008,680	23,055,679	0.11%	25,064,359	6,890	25,071,249
Q1 2012	145,849	\$12	1,750,188	25,071,249	0.15%	26,821,437	9,829	26,831,266
Q2 2012	147,804	\$12	1,773,648	26,831,266	0.18%	28,604,914	13,102	28,618,015
Q3 2012	151,068	\$12	1,812,816	28,618,015	0.18%	30,430,831	13,431	30,444,263
Q4 2012	159,161	\$12	1,909,932	30,444,263	0.16%	32,354,195	13,203	32,367,398
Q1 2013	154,865	\$12	1,858,380	32,367,398	0.14%	34,225,778	12,258	34,238,036
Q2 2013	160,179	\$12	1,922,148	34,238,036	0.12%	36,160,184	11,144	36,171,328
Q3 2013	176,944	\$12	2,123,328	36,171,328	0.12%	38,294,656	11,164	38,305,820
Q4 2013	170,184	\$12	2,042,208	38,305,820	0.12%	40,348,028	12,099	40,360,127
Q1 2014	155,018	\$12	1,860,216	40,360,127	0.11%	42,220,343	11,957	42,232,301
Q2 2014	139,623	\$12	1,675,476	42,232,301	0.10%	43,907,777	10,607	43,918,384
Q3 2014	152,532	\$12	1,830,384	43,918,384	0.10%	45,748,768	11,433	45,760,201
Q4 2014	152,984	\$12	1,835,808	45,760,201	0.14%	47,596,009	16,650	47,612,659
Q1 2015	142,818	\$12	1,713,816	47,612,659	0.21%	49,326,475	25,876	49,352,351
Q2 2015	105,121	\$12	1,261,452	49,352,351	0.23%	50,613,803	29,499	50,643,302
Q3 2015			50,643,302	0.33%		50,643,302	41,729	50,685,031
Q4 2015			50,685,031	0.44%		50,685,031	56,083	50,741,113
Q1 2016			50,741,113	0.56%		50,741,113	70,899	50,812,002
Q2 2016			50,812,002	0.55%		50,812,002	69,723	50,881,725
Q3 2016			50,881,725	0.54%		50,881,725	68,974	50,950,699
Q4 2016			50,950,699	0.73%		50,950,699	92,732	51,043,431
Q1 2017			51,043,431	0.86%		51,043,431	108,969	51,152,399
Q2 2017 <sup>1,2</sup>			51,152,399	1.05%		51,152,399	133,750	51,286,149
	<u><b>4,192,814</b></u>		<u><b>\$ 50,313,768</b></u>				<u><b>\$ 972,381</b></u>	

**Notes:**

[1] One Year Treasury Bill rates are available through May 2017. Therefore, the average of April and May 2017 has been used as a proxy for Q2 2017.

[2] Daily prejudgment interest for Q3 2017 estimated as \$133,750 / 91 days = \$1,470.

**Sources:**

Schedule 2.0

Schedule 3.0

**Prejudgment Interest - Compounded Annually**

*March 28, 2008 - June 30, 2017*

Period	Prior Year Royalty Base	Royalty Rate	Prior Year Royalties	Starting Accrued Royalties & Interest	T-Bill Rate (Annual)	Total Accrued Royalties & Interest	Interest Earned	Ending Accrued Royalties & Interest
3/28/2009 - 3/27/2010	520,706	\$12	\$ 6,248,471	\$ -	0.40%	\$ 6,248,471	\$ 24,890	\$ 6,273,361
3/28/2010 - 3/27/2011	598,546	\$12	\$ 7,182,551	\$ 6,273,361	0.28%	\$ 13,455,912	\$ 37,677	\$ 13,493,588
3/28/2011 - 3/27/2012	627,958	\$12	\$ 7,535,491	\$ 13,493,588	0.14%	\$ 21,029,080	\$ 30,317	\$ 21,059,397
3/28/2012 - 3/27/2013	618,351	\$12	\$ 7,420,207	\$ 21,059,397	0.17%	\$ 28,479,603	\$ 47,466	\$ 28,527,069
3/28/2013 - 3/27/2014	625,138	\$12	\$ 7,501,661	\$ 28,527,069	0.12%	\$ 36,028,730	\$ 42,634	\$ 36,071,364
3/28/2014 - 3/27/2015	642,697	\$12	\$ 7,712,362	\$ 36,071,364	0.14%	\$ 43,783,726	\$ 59,838	\$ 43,843,564
3/28/2015 - 3/27/2016	559,418	\$12	\$ 6,713,013	\$ 43,843,564	0.39%	\$ 50,556,577	\$ 198,013	\$ 50,754,590
3/28/2016 - 3/27/2017	-	\$12	\$ -	\$ 50,754,590	0.67%	\$ 50,754,590	\$ 340,056	\$ 51,094,646
3/28/2017 - 6/30/2017 <sup>2,3</sup>				\$ 51,094,646	1.05%	\$ 51,094,646	\$ 139,096	\$ 51,233,742
	<b><u>4,192,813</u></b>		<b><u>\$ 50,313,756</u></b>				<b><u>\$ 919,986</u></b>	

**Notes:**

[1] The final period has been prorated by the days in the period from March 28, 2017 through June 30, 2017, (95) over the total days in the period from March 28, 2017 through March 27, 2018 (365).

[2] One Year Treasury Bill rates are available through May 2017. Therefore, the average of April and May 2017 has been used as a proxy for the period 3/28/2017 - 6/30/2017.

[3] Daily prejudgment interest for Q3 2017 estimated as \$139,096 / 95 days = \$1,464.

**Sources:**

Schedule 2.0

Schedule 3.0

**One Year Treasury Bill Rates<sup>1</sup>**  
*June 2008 - May 2017*

Date	Rate %	Quarterly Average <sup>2</sup>	Annual Average
Jun-2008	2.35	2.35	
Jul-2008	2.20		
Aug-2008	2.11		
Sep-2008	1.86	2.06	
Oct-2008	1.38		
Nov-2008	1.04		
Dec-2008	0.47	0.96	
Jan-2009	0.42		
Feb-2009	0.60		
Mar-2009	0.62	0.55	1.31
Apr-2009	0.52		
May-2009	0.48		
Jun-2009	0.49	0.50	
Jul-2009	0.46		
Aug-2009	0.44		
Sep-2009	0.38	0.43	
Oct-2009	0.35		
Nov-2009	0.29		
Dec-2009	0.35	0.33	
Jan-2010	0.32		
Feb-2010	0.33		
Mar-2010	0.37	0.34	0.40
Apr-2010	0.42		
May-2010	0.35		
Jun-2010	0.30	0.36	
Jul-2010	0.28		
Aug-2010	0.25		
Sep-2010	0.25	0.26	
Oct-2010	0.22		
Nov-2010	0.24		
Dec-2010	0.28	0.25	
Jan-2011	0.26		
Feb-2011	0.27		
Mar-2011	0.24	0.26	0.28
Apr-2011	0.23		

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**One Year Treasury Bill Rates<sup>1</sup>**  
**June 2008 - May 2017**

Date	Rate %	Quarterly Average <sup>2</sup>	Annual Average
May-2011	0.17		
Jun-2011	0.17	0.19	
Jul-2011	0.18		
Aug-2011	0.11		
Sep-2011	0.10	0.13	
Oct-2011	0.11		
Nov-2011	0.11		
Dec-2011	0.11	0.11	
Jan-2012	0.11		
Feb-2012	0.15		
Mar-2012	0.18	0.15	0.14
Apr-2012	0.18		
May-2012	0.19		
Jun-2012	0.18	0.18	
Jul-2012	0.18		
Aug-2012	0.18		
Sep-2012	0.17	0.18	
Oct-2012	0.17		
Nov-2012	0.17		
Dec-2012	0.15	0.16	
Jan-2013	0.14		
Feb-2013	0.15		
Mar-2013	0.14	0.14	0.17
Apr-2013	0.12		
May-2013	0.11		
Jun-2013	0.14	0.12	
Jul-2013	0.12		
Aug-2013	0.12		
Sep-2013	0.11	0.12	
Oct-2013	0.11		
Nov-2013	0.12		
Dec-2013	0.13	0.12	
Jan-2014	0.11		
Feb-2014	0.11		
Mar-2014	0.12	0.11	0.12

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**One Year Treasury Bill Rates<sup>1</sup>**  
*June 2008 - May 2017*

Date	Rate %	Quarterly Average <sup>2</sup>	Annual Average
Apr-2014	0.10		
May-2014	0.09		
Jun-2014	0.10	0.10	
Jul-2014	0.10		
Aug-2014	0.10		
Sep-2014	0.10	0.10	
Oct-2014	0.10		
Nov-2014	0.12		
Dec-2014	0.20	0.14	
Jan-2015	0.18		
Feb-2015	0.21		
Mar-2015	0.24	0.21	0.14
Apr-2015	0.22		
May-2015	0.22		
Jun-2015	0.26	0.23	
Jul-2015	0.28		
Aug-2015	0.36		
Sep-2015	0.35	0.33	
Oct-2015	0.25		
Nov-2015	0.45		
Dec-2015	0.63	0.44	
Jan-2016	0.52		
Feb-2016	0.52		
Mar-2016	0.64	0.56	0.39
Apr-2016	0.54		
May-2016	0.57		
Jun-2016	0.54	0.55	
Jul-2016	0.50		
Aug-2016	0.55		
Sep-2016	0.58	0.54	
Oct-2016	0.64		
Nov-2016	0.71		
Dec-2016	0.84	0.73	
Jan-2017	0.80		
Feb-2017	0.79		

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**One Year Treasury Bill Rates<sup>1</sup>**  
**June 2008 - May 2017**

Date	Rate %	Quarterly Average <sup>2</sup>	Annual Average
Mar-2017	0.98	0.86	0.67
Apr-2017	1.01		
May-2017	1.09	1.05	1.05

**Notes:**

[1] One Year Treasury Bill: Secondary Market Rate, Percent, Monthly, Not Seasonally Adjusted

[2] One Year Treasury Bills were not sold prior to the month ending June 2008. Therefore, the rate for June 2008 has been used as a proxy for the average for Q2 2008.

**Source:**

Federal Reserve Economic Data - <https://fred.stlouisfed.org>

**Cullet Purchases**  
**March 2008 - March 2015**

	2008	2009	2010	2011	2012	2013	2014	2015	Total
January		42,274	46,938	55,510	47,089	58,214	46,473	49,923	346,421
February		38,927	49,101	49,234	48,356	48,563	46,932	49,275	330,388
March	4,598	44,292	56,863	54,634	52,359	53,402	46,219	5,922	318,289
April	40,507	46,280	49,244	52,381	48,842	57,402	55,560		350,216
May	42,088	45,756	51,253	51,868	50,737	62,101	43,921		347,724
June	44,540	59,938	58,033	52,766	51,489	57,440	53,051		377,257
July	47,005	57,614	51,045	51,178	51,728	56,097	48,207		362,874
August	46,731	52,226	55,462	56,463	55,414	57,319	52,245		375,860
September	47,819	46,554	51,461	59,748	52,019	56,768	52,532		366,901
October	48,347	52,909	48,482	50,060	53,549	63,213	56,394		372,954
November	41,629	45,396	47,898	51,998	54,200	50,762	50,595		342,478
December	37,664	40,593	55,414	43,791	47,116	41,044	35,829		301,451
Total	400,928	572,759	621,194	629,631	612,898	662,325	587,958	105,120	4,192,813

	3/28/2008 - 3/27/2009	3/28/2009 - 3/27/2010	3/28/2010 - 3/27/2011	3/28/2011 - 3/27/2012	3/28/2012 - 3/27/2013	3/28/2013 - 3/27/2014	3/28/2014 - 3/27/2015 <sup>2</sup>	Total
March 28 - March 31	4,598	5,715	7,337	7,050	6,756	6,891	5,964	44,310
April	40,507	46,280	49,244	52,381	48,842	57,402	55,560	350,216
May	42,088	45,756	51,253	51,868	50,737	62,101	43,921	347,724
June	44,540	59,938	58,033	52,766	51,489	57,440	53,051	377,257
July	47,005	57,614	51,045	51,178	51,728	56,097	48,207	362,874
August	46,731	52,226	55,462	56,463	55,414	57,319	52,245	375,860
September	47,819	46,554	51,461	59,748	52,019	56,768	52,532	366,901
October	48,347	52,909	48,482	50,060	53,549	63,213	56,394	372,954
November	41,629	45,396	47,898	51,998	54,200	50,762	50,595	342,478
December	37,664	40,593	55,414	43,791	47,116	41,044	35,829	301,451
January	42,274	46,938	55,510	47,089	58,214	46,473	49,923	346,421
February	38,927	49,101	49,234	48,356	48,563	46,932	49,275	330,388
March 1 - March 27	38,577	49,526	47,584	45,603	46,511	40,255	5,922	273,979
Total	520,706	598,546	627,958	618,351	625,138	642,697	559,418	4,192,813

**Notes:**

[1] The period March 28th through the 31st has been prorated by multiplying cullet purchases for the month of March by (4/31). The period March 1st through March 27th has been prorated by multiplying cullet purchases for the month of March by (27/31).  
[2] The 737 Patent expired on March 3, 2015. Cullet purchases have already been prorated through March 3, 2015 and as such no further proration is necessary for the period of March 1, 2015 through March 27, 2015.

**Source:**

Declaration of Michael J. Lasinski, May 19, 2017, Exhibits 2.2-2.11